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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 150629564-5564-01]**

**RIN 0648-BF24**

**Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch;  
Emergency Rule**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency rule; request for comments.

**SUMMARY:** This emergency rule establishes a 1,600 Chinook salmon prohibited species catch (PSC) limit for the Western and Central Gulf of Alaska (GOA) Non-Rockfish Program trawl catcher vessel sector (Non-Rockfish Program CV Sector) that is immediately available for use by the sector until the limit is reached or December 31, 2015. On January 1, 2015, an annual Chinook salmon PSC limit of 2,700 Chinook salmon became available for use by the Non-Rockfish Program CV Sector implementing Amendment 97 to the Fishery Management Plan for Groundfish of the GOA (FMP). On May 3, 2015, and considerably earlier than had been expected, NMFS prohibited directed fishing for groundfish by the Non-Rockfish Program CV Sector after determining that the sector had exceeded its annual PSC limit of 2,700 Chinook salmon. The North Pacific Fishery Management Council and NMFS recently discovered that the

use of Chinook salmon PSC by the Non-Rockfish Program CV Sector in the first few months of 2015 was exorbitantly greater than the historical use, which was relied on in developing the Chinook salmon PSC limit for this sector, and that this discrepancy in use was not foreseen when the PSC limit of 2,700 Chinook salmon for the Non-Rockfish Program CV Sector was implemented under Amendment 97. Due to the directed fishing closure, significant amounts of non-pollock groundfish remain unharvested by the Non-Rockfish Program CV Sector, and fishermen, shoreside processors, and communities that participate in the Non-Rockfish Program CV Sector have limited alternatives to mitigate the resulting significant, negative economic effects. This emergency rule is necessary to relieve a restriction that is preventing non-pollock groundfish harvest by the Non-Rockfish Program CV Sector while continuing to limit the amount of Chinook salmon PSC used by this sector. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** The amendments to § 679.21(i)(2)(iii) and (i)(7)(i) are effective [insert date of publication in the FEDERAL REGISTER]. The amendment to § 679.21(i)(8) is effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2015. Comments must be received by [*INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2015-0082, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0082)

[0082](#), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this emergency rule may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Assessment, RIR, and Initial Regulatory Flexibility Analysis for Amendment 93 to the FMP (Amendment 93 Analysis) and the Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 97 to the FMP (Amendment 97 Analysis) are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone of the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council)

prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This emergency rule establishes a 1,600 Chinook salmon prohibited species catch (PSC) limit for the Non-Rockfish Program CV Sector that is immediately available for use by the sector in Western and Central GOA non-pollock trawl fisheries until the limit is reached or December 31, 2015, whichever occurs first. The following sections describe: (1) the non-pollock trawl fisheries and Amendment 97 to the FMP; (2) the estimation of Chinook salmon PSC in the Non-Rockfish Program CV Sector; (3) the implementation of Amendment 97 in 2015; and (4) the emergency rule and justification for emergency action.

#### **Non-pollock trawl fisheries and Amendment 97 to the FMP**

Trawl groundfish fisheries that do not target pollock (i.e., non-pollock trawl fisheries) in the Western and Central GOA include fisheries for sablefish, several rockfish species, arrowtooth flounder, Pacific cod, shallow water flatfish, rex sole, flathead sole, deep-water flatfish, and other non-pollock groundfish. Many of the non-pollock trawl fisheries are multi-species fisheries, in that vessels catch and retain multiple groundfish species in a single fishing trip. Additional detail on the primary target groundfish species and catch amounts in the non-pollock trawl fisheries in the Western and Central GOA are provided in Section 1.5.1 of the RIR (see **ADDRESSES**), the Amendment 97 Analysis, and in the final 2015 and 2016 harvest specifications for the GOA groundfish fisheries (80 FR 10250, February 25, 2015).

The Council and NMFS have adopted various measures intended to control the catch of species taken incidentally in groundfish fisheries. Certain species are designated as “prohibited

species” in the FMP because they are the target of other, fully utilized domestic fisheries. The prohibited species in the FMP are Pacific halibut, Pacific herring, Pacific salmon, steelhead trout, king crab, and Tanner crab. One of the prohibited species of greatest concern to the Council and NMFS is Chinook salmon. Chinook salmon is a prohibited species in the groundfish fisheries because it is a culturally and economically valuable species that is fully allocated and for which State of Alaska and Federal managers seek to conservatively manage harvests. The Council and NMFS have established a range of management measures to constrain the impact of GOA groundfish fisheries on Chinook salmon. A summary of these measures is provided in Section 1.5.2 of the RIR.

NMFS has implemented two specific programs to limit Chinook salmon bycatch in the GOA trawl fisheries. In 2012, NMFS implemented Amendment 93 to the FMP to establish separate Chinook salmon PSC limits for the directed pollock trawl fisheries in the Western and Central GOA (77 FR 42629, July 20, 2012). These limits require NMFS to close the directed pollock fishery in the Western or Central GOA if the applicable PSC limit is reached (see regulations at § 679.21(h)(6)). The annual Chinook salmon PSC limit for the directed pollock fishery in the Western GOA is 6,684 Chinook salmon, and the annual Chinook salmon PSC limit for the directed pollock fishery in the Central GOA is 18,316 Chinook salmon (see regulations at § 679.21(h)(2)(i) and (h)(2)(ii)). Collectively, the Chinook salmon PSC limit established for the pollock trawl fisheries in the Western and Central GOA is 25,000 Chinook salmon. Amendment 93 is described in more detail in the Amendment 93 Analysis, the final rule implementing Amendment 93 (77 FR 42629, July 20, 2012), and Section 1.5.3 of the RIR.

In 2013, the Council voted to adopt Amendment 97 to the FMP to establish separate Chinook salmon PSC limits for the directed non-pollock trawl fishery in the Western and Central

GOA. NMFS approved Amendment 97 in 2014 (79 FR 71350, December 2, 2014), and it became effective on January 1, 2015. Amendment 97 is designed to meet three management goals. The first goal is to avoid exceeding the annual catch threshold of 40,000 Chinook salmon identified in the incidental take statement accompanying the November 30, 2000, biological opinion on the effects of the Alaska groundfish fisheries on salmon of the Pacific Northwest that are listed as threatened or endangered under the Endangered Species Act. The second goal is to minimize Chinook salmon bycatch to the extent practicable, consistent with the Magnuson-Stevens Act and National Standard 9. The third goal is to increase the amount of Chinook salmon stock of origin information available to NMFS and the Council. This third goal is not modified or otherwise affected by this emergency rule and is not addressed further. Amendment 97 is described in more detail in the Amendment 97 Analysis, the final rule implementing Amendment 97 (79 FR 71350, December 2, 2014), and Section 1.5.4 of the RIR.

For purposes of managing Chinook salmon bycatch in the Western and Central GOA non-pollock trawl fishery, Amendment 97 includes a long-term average annual Chinook salmon PSC limit of 7,500 Chinook salmon and implements this by establishing separate Chinook salmon PSC limits for three fishery sectors: (1) the Trawl Catcher/Processor (C/P) Sector; (2) the Rockfish Program Catcher Vessel (CV) Sector; and (3) the Non-Rockfish Program CV Sector. Each of these sectors is described in Section 1.5.1 of the RIR.

Amendment 97 establishes annual base Chinook salmon PSC limits of 3,600 Chinook salmon for the Trawl C/P Sector, 1,200 Chinook salmon for the Rockfish Program CV Sector, and 2,700 Chinook salmon for the Non-Rockfish Program CV Sector. Additionally, Amendment 97 includes authority for NMFS to reallocate Chinook salmon PSC from the Rockfish Program CV Sector to the Non-Rockfish Program CV Sector (see regulations at § 679.21(i)(4)). NMFS is

authorized to reallocate all of the Rockfish Program CV Sector's unused Chinook salmon PSC limit in excess of 150 salmon to the Non-Rockfish Program CV Sector on October 1 of each year, and all remaining unused Chinook salmon PSC to the Non-Rockfish Program CV Sector on November 15 of each year. If a sector reaches or is projected to reach its Chinook salmon PSC limit, NMFS will close directed fishing for all non-pollock groundfish species by vessels in that sector for the remainder of the calendar year (see regulations at § 679.21(i)(7)). Each sector is subject to its own annual Chinook salmon PSC limit, and NMFS manages each sector separately. The rationale for the Chinook salmon PSC limits selected for each of the three sectors is described in detail in the proposed and final rules implementing Amendment 97 (respectively, 79 FR 35971, June 25, 2014; 79 FR 71350, December 2, 2014). Because the subject of this emergency rule is the Non-Rockfish Program CV Sector, the following paragraphs provide additional detail on the Non-Rockfish Program CV Sector and the Chinook salmon PSC limit selected for that sector.

The Non-Rockfish Program CV Sector is composed of non-pollock trawl CVs authorized to fish for groundfish in the GOA that are not fishing under the authority of a Rockfish Program Cooperative Quota Permit. This sector fishes primarily for Pacific cod in the Central and Western GOA, and arrowtooth flounder, flathead sole, rex sole, deepwater flatfish, and shallow-water flatfish in the Central GOA. For a more detailed description of the Non-Rockfish Program CV Sector, see Section 1.5.1 of the RIR.

In recommending and approving the 2,700 Chinook salmon PSC limit for the Non-Rockfish Program CV Sector, both the Council and NMFS determined that the limit would accommodate groundfish harvests in most years in this sector. The Council and NMFS selected the Chinook salmon PSC limit of 2,700 after considering the historic amount of Chinook salmon

PSC used by the Non-Rockfish Program CV Sector based on available fishery observer data during the time period analyzed and the management of the fishery at that time. These factors are briefly described and summarized in the following paragraphs. Additional detail is available in the Amendment 97 Analysis (see **ADDRESSES**) and the proposed rule for Amendment 97 (79 FR 35971, June 25, 2014) and the final rule implementing Amendment 97 (79 FR 71350, December 2, 2014).

According to the Amendment 97 Analysis, the Chinook salmon PSC limit of 2,700 salmon is approximately 8 percent greater than the estimated average annual amount of Chinook salmon PSC used in the Non-Rockfish Program CV Sector (2,489 salmon) during a representative 5-year period (2007 through 2011) analyzed by the Council and NMFS. The Amendment 97 Analysis shows that the 2,700 Chinook salmon PSC limit for the Non-Rockfish Program CV Sector would have closed the directed groundfish fisheries for this sector in two out of five years during 2007 through 2011 if that PSC limit had been in effect.

Data from 2007 through 2011 in the Amendment 97 Analysis indicate that almost all of the Chinook salmon PSC by the Non-Rockfish Program CV Sector occurred in the Central GOA. Average annual Chinook salmon PSC for the Non-Rockfish Program CV Sector from 2007 through 2011 in the Western GOA was 44 Chinook salmon, ranging from a high of 107 Chinook salmon in 2008 to a low of zero Chinook salmon in 2011. Therefore, Chinook salmon PSC in the Central GOA represented nearly 98 percent of the average annual Chinook salmon PSC, and the Western GOA represented only 2 percent of the Chinook salmon PSC in the Non-Rockfish Program CV Sector from 2007 through 2011. Additionally, the data in the Amendment 97 Analysis show that Chinook salmon PSC in the Western GOA occurs during the first few months of the year when Non-Rockfish Program CV Sector vessels are participating in a Pacific cod



fishery in the Western GOA. When that fishery closes, Non-Rockfish Program CV Sector vessels fish in the Central GOA for the remainder of the year. See Section 1.5.7 of the RIR for additional detail.

### **Estimation of Chinook Salmon PSC in the Non-Rockfish Program CV Sector**

NMFS uses observer data to account for Chinook salmon PSC by participants in the GOA groundfish fisheries, including the Non-Rockfish Program CV Sector.

Prior to 2013, NMFS did not deploy observers on vessels that were less than 60 feet in length overall. Because a number of vessels within the Non-Rockfish Program CV Sector vessels that participate in non-pollock groundfish fisheries in the Western GOA are less than 60 feet in length, NMFS estimated Chinook salmon PSC in the Western GOA for this sector by using observer information from a different group of vessels that are equal to or greater than 60 feet in length and that typically participate in Central GOA non-pollock groundfish fisheries. The Council relied on these estimates of Chinook salmon PSC in developing its Chinook salmon PSC limit for the Non-RF Program CV Sector. Those estimates were the best available data for Chinook salmon PSC use in the Non-Rockfish Program CV Sector during the years examined by the Council in the Amendment 97 Analysis.

NMFS implemented the restructured observer program in 2013 (77 FR 70062, November 21, 2012). An important change in sampling methodology under the new observer program is to deploy observers on trawl vessels under 60 feet and greater than 40 feet. NMFS had not deployed observers on vessels of this length prior to the restructured program. In 2013 and 2014, NMFS included these vessels in the partial coverage category as part of the "vessel selection" pool.

In order to address issues that had developed with observer coverage rates on vessels under 60 feet in the “vessel selection” pool, as documented in the 2013 and 2014 Annual Report for the North Pacific Groundfish and Halibut Observer Program, NMFS moved vessels less than 60 feet from the “vessel selection” pool to the “trip selection” pool for 2015. Issues with the vessel selection pool include an incomplete sampling frame and difficulty achieving a target number of vessels to be observed. The move of vessels to the trip selection pool increased observer deployment on vessels under 60 feet in length overall, including vessels under 60 feet that participate in Western GOA non-pollock groundfish fisheries within the Non-Rockfish Program CV Sector. NMFS believes the change has improved observer data by better representing fishing events.

#### **Implementation of Amendment 97 in 2015**

Amendment 97, and the Chinook salmon PSC limit of 2,700 Chinook salmon for the Non-Rockfish Program CV Sector, became effective on January 1, 2015. Based on observer data from January through April 2015, NMFS estimated Chinook salmon PSC use in the Non-Rockfish Program CV Sector at 1,056 Chinook salmon in the Western GOA and 1,568 Chinook salmon in the Central GOA. Therefore, on April 30, 2015, NMFS determined that the Non-Rockfish Program CV Sector would reach its Chinook salmon PSC limit of 2,700 Chinook salmon and published an information bulletin notifying the public that NMFS was prohibiting directed fishing by the Non-Rockfish Program CV Sector as soon as possible to prevent the sector from exceeding its Chinook salmon PSC limit. On May 3, 2015, NMFS published a rule prohibiting directed fishing for non-pollock groundfish species by the Non-Rockfish Program CV Sector for the remainder of 2015 (May 6, 2015, 80 FR 25967).

At its June 2015 meeting, the Council received information from NMFS and the public concerning the data leading to the directed fishing closure of the Non-Rockfish Program CV Sector and the effects of the closure on participants in the GOA (See section 1.5.7. and 1.6 of the RIR). After considering this information, the Council recommended, by a 10 to 1 vote, that NMFS implement an emergency rule that would allocate an additional 1,600 Chinook salmon to the Non-Rockfish Program CV Sector that is immediately available for use by the sector until the limit is reached or December 31, 2015, whichever occurs first.

### **The Emergency Rule and Justification for Emergency Action**

This emergency rule implements a 1,600 Chinook salmon PSC limit for the Non-Rockfish Program CV Sector through a new regulatory paragraph at § 679.21(i)(8). The Council recommended an additional PSC limit of 1,600 Chinook salmon based on the average amount of Chinook salmon PSC used by the Non-Rockfish Program CV Sector to harvest its average amount of groundfish after May 1 (effectively the date of the closure in 2015) until the end of the year. Based on data in Section 1.6.1 of the RIR, NMFS agrees with the Council that an average of 1,600 Chinook salmon PSC are used by the Non-Rockfish Program CV Sector after May 1, based on Chinook salmon PSC use from 2010 through 2014. NMFS agrees that an additional 1,600 Chinook salmon will likely support prosecution of the groundfish fisheries in the Non-Rockfish Program CV Sector for the remainder of 2015.

The Chinook salmon PSC limit implemented by this emergency rule is separate and distinct from the sector's annual Chinook salmon PSC limit established by regulations at § 679.21(i)(3)(i)(C). Any amount of Chinook salmon PSC that were used in excess of the sector's annual limit will not be deducted from the PSC limit established by this emergency rule. The 1,600 Chinook salmon PSC limit established by this emergency rule is available for use by the

Non-Rockfish Program CV Sector starting on [*insert date of publication in the FEDERAL REGISTER*] until it is reached or December 31, 2015, whichever occurs first. Any amount of the 1,600 Chinook salmon PSC limit that remains unused on December 31, 2015, will not be available to the sector for the 2016 fishing year.

The Chinook salmon PSC reallocation provisions at § 679.21(i)(4) will continue to apply under this emergency rule, in the event that Rockfish Program CV Sector Chinook salmon PSC is available to reallocate to the Non-Rockfish Program CV Sector beginning on October 1, 2015. At this time, NMFS anticipates a small reallocation of PSC, or none at all, to the Non-Rockfish Program CV Sector beginning on October 1, 2015, based on current and anticipated use of Chinook salmon PSC in the Rockfish Program CV Sector through the remainder of 2015 (see Section 1.4 of the RIR for additional detail). If there is Chinook salmon PSC available for reallocation on October 1, 2015, or November 15, 2015, the total Chinook salmon PSC available for use by the Non-Rockfish Program CV Sector in 2015 will be slightly increased.

Regulations at § 679.21(i)(2)(i) are amended to include reference to the new Chinook salmon PSC limit of 1,600 Chinook salmon for the Non-Rockfish Program CV Sector. Regulations at § 679.21(i)(7)(i), which describe the procedure NMFS follows for closing a non-pollock trawl sector if a Chinook salmon PSC limit is reached, are amended to include reference to the new Chinook salmon PSC limit for the Non-Rockfish Program CV Sector.

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a Council may recommend emergency rulemaking if it finds an emergency exists. NMFS's Policy Guidelines for the Use of Emergency Rules provide that the only legal prerequisite for such rulemaking is that an emergency must exist, and that NMFS must have an administrative record justifying emergency regulatory action and

demonstrating compliance with the Magnuson-Stevens Act and the National Standards (see NMFS Instruction 01-101-07 (March 31, 2008) and 62 FR 44421, August 21, 1997). Emergency rulemaking is intended for circumstances that are “extremely urgent,” where “substantial harm to or disruption of the...fishery...would be caused in the time it would take to follow standard rulemaking procedures.”

Under NMFS’ Policy Guidelines for the Use of Emergency Rules, the phrase “an emergency exists involving any fishery” is defined as a situation that meets the following three criteria:

- 1) Results from recent, unforeseen events or recently discovered circumstances;
- 2) Presents serious conservation or management problems in the fishery; and
- 3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

The following sections review each of these criteria and describe why the Council and NMFS determined that the May 3, 2015, closure of the Non-Rockfish Program CV Sector groundfish fisheries and the establishment of a 1,600 Chinook salmon PSC limit for the remainder of 2015 meets these criteria.

#### *Criterion 1 – Recent, Unforeseen Events or Recently Discovered Circumstances*

The Council and NMFS recently discovered that the use of Chinook salmon PSC in the Non-Rockfish Program CV Sector in early 2015 was exorbitantly greater than historical use, and that this significant discrepancy was unforeseen and unexpected. The use of Chinook salmon PSC by the Non-Rockfish Program CV Sector in the Western GOA resulted in the sector’s

reaching its Chinook salmon PSC limit much earlier than anticipated – the amount of Chinook salmon PSC taken in the Non-Rockfish Program CV Sector closed all of this sector’s non-pollock groundfish fisheries approximately seven months before these fisheries would typically close. From January 1, 2015, through April 30, 2015 (the date the fleet was notified of the impending closure of the Non-Rockfish Program CV Sector), Chinook salmon PSC use in the Non-Rockfish Program CV Sector in the Western GOA was estimated at 1,056 Chinook salmon. This amount is nearly 10 times greater than the maximum amount of Chinook salmon PSC used by the Non-Rockfish Program CV Sector during any complete calendar year from 2007 through 2011 (in 2008, 107 Chinook salmon were used in the Western GOA during the entire year). Chinook salmon PSC use by the Non-Rockfish Program CV Sector from January 1, 2015, through April 30, 2015, was nearly 24 times the average annual Chinook salmon PSC use in the Western GOA from 2007 through 2011 (44 Chinook salmon). See Section 1.5.7 in the RIR for additional detail.

The unexpectedly high use of Chinook salmon PSC in the Western GOA resulted in the Non-Rockfish Program CV Sector reaching its PSC limit even though Chinook salmon use in the Central GOA from January 1, 2015, through April 30, 2015, was not unexpectedly high (1,568 Chinook salmon). Chinook salmon PSC use in the Central GOA in 2015 prior to May 1, 2015, was less than the maximum amount of Chinook salmon PSC used from January 1 through April 30 during any of the years the Council and NMFS considered when recommending Amendment 97 (2,424 Chinook salmon PSC were used prior to May 1 in 2010), and only slightly greater than the average Chinook salmon PSC use during the January 1 through April 30 time period from 2007 through 2011 (1,011 Chinook salmon PSC were used on average during these years). Section 1.5.7 in the RIR provides additional detail. The magnitude of Chinook salmon use by

the sector in the Western GOA when compared with the average use of Chinook salmon by the sector in the Central GOA seems to indicate that 2015 is not simply a high encounter year for Chinook salmon.

This unforeseen and unexpected increase in the amount of Chinook salmon PSC use occurred after the implementation of improved Chinook salmon PSC data collection on vessels in the Western GOA. As described earlier, NMFS implemented a restructured North Pacific Groundfish and Halibut Observer Program (Observer Program) in 2013 (77 FR 70062, November 21, 2012). Prior to 2013, no observer data were collected on vessels less than 60 feet in length overall, and observer data collected on vessels 60 feet in length overall and greater were used to generate Chinook salmon PSC estimates for these smaller vessels. Participation in a particular fishery may be dominated by vessels larger or shorter than 60 feet in length overall and Chinook salmon PSC use is likely to vary among fisheries depending on the location and timing of a fishery. Because the majority of vessels that participate in the Western GOA groundfish fisheries are less than 60 feet in length overall and were unobserved before 2013, the data used to estimate Chinook salmon PSC use in the Amendment 97 Analysis were derived from vessels greater than 60 feet in length overall.

The use of data available under the restructured Observer Program, including data from vessels not previously observed in the Western GOA, has resulted in estimates of a substantial and unexpected amount of Chinook salmon PSC. This unforeseen and recently discovered increase in the use of Chinook salmon PSC in the Western GOA contributed significantly to the total amount of Chinook salmon PSC used by the Non-Rockfish Program CV Sector and led to the closure of the Non-Rockfish Program CV Sector fisheries.

*Criterion 2 – Presents Serious Conservation or Management Problems in the Fishery*

The Council and NMFS determined that this emergency rule criterion is met because the early closure prevents the Non-Rockfish Program CV Sector from harvesting thousands of metric tons of groundfish and results in foregone revenue to harvesters, processors and communities that participate in the Non-Rockfish Program CV Sector. The closure is estimated to prevent harvest of 13,000 to 15,000 metric tons of groundfish that would otherwise be available for harvest to this sector through the remainder of 2015 based on an analysis of average groundfish catch by this sector for the years 2012 through 2014 and 2010 through 2014 (see Section 1.5 of the RIR for additional detail). The lost revenue from this forgone harvest is estimated to be approximately \$4.6 million in ex-vessel value and \$11.3 million in first wholesale value (see Section 1.6.1 of the RIR).

Shoreside processors and the community of Kodiak, Alaska, are disproportionately affected by this closure because after May, groundfish harvested by the Non-Rockfish CV Sector is almost exclusively delivered to shoreside processors operating in Kodiak (see Section 1.6.1 of the RIR). Sections 1.5.7 and 1.6.1 of the RIR provide additional information on the expected effects of the directed fishing closure of the Non-Rockfish Program CV Sector on harvesters, processors, and the community of Kodiak. This emergency rule is the only mechanism to restore the foregone harvest and lost revenue because other groundfish fisheries that could substitute for these losses are fully allocated and are not available to the Non-Rockfish Program CV Sector.

The Council and NMFS have determined that a 1,600 Chinook limit will likely allow the Non-Rockfish Program CV Sector to harvest remaining amounts of groundfish. If 1,600 Chinook salmon PSC are made available to the Non-Rockfish Program CV Sector by mid-August, NMFS anticipates that most, if not all, the fall Pacific cod fishery will be harvested by the sector, and a substantial portion of the forgone flatfish for the latter half of 2015 will be harvested. The



Council's objective for this Emergency Rule was to restore the lost harvesting opportunities to the Non-Rockfish Program CV Sector to the maximum extent possible while continuing to impose a limit on the use of Chinook salmon PSC in the GOA trawl fisheries that likely will not exceed the combined Chinook salmon PSC limits established under Amendments 93 and 97.

The Council and NMFS also determined that implementation of this emergency rule will not create conservation issues with regard to Chinook salmon. The Council and NMFS considered the original and continuing goals for Amendment 97 to the FMP: to avoid exceeding Chinook salmon PSC use of 40,000 Chinook salmon in the GOA trawl groundfish fisheries, and to minimize bycatch of Chinook salmon to the extent practicable. The Council made its emergency rule recommendation after considering the average annual use of Chinook salmon PSC by all GOA trawl sectors for the most recent five years (2010 through 2014), total use of Chinook salmon PSC by all GOA trawl sectors from January 1, 2015, through April 30, 2015, and anticipated use of Chinook salmon PSC by all GOA trawl sectors for the remainder of 2015 (from May 1 through December 31). Based on this review of historic, current, and anticipated Chinook salmon PSC use from all trawl sectors in the Western and Central GOA, the Council and NMFS concluded that the combined GOA trawl Chinook salmon PSC in 2015 will not exceed 40,000 even with implementation of the emergency rule.

The Council and NMFS also concluded that although the GOA trawl groundfish fisheries will be authorized to take a maximum of 34,100 Chinook salmon in 2015 under current regulations and this emergency rule, it is highly unlikely that the additional allocation of 1,600 Chinook salmon for the Non-Rockfish Program CV Sector will result in total Chinook salmon PSC in the GOA trawl groundfish fisheries for 2015 exceeding 32,500 Chinook salmon, the total combined pollock and non-pollock Chinook salmon PSC limits. Sections 1.5.7 and 1.6.1 of the

RIR describe the historic, current, and anticipated Chinook salmon PSC use in each of the GOA pollock and non-pollock trawl sectors, including the Non-Rockfish Program CV Sector. The data from Table 2 in the RIR at Section 1.4.3 show that an average of over 13,000 Chinook salmon were left unused by the GOA pollock sector in 2013 and 2014. Including 2012, 2013, and 2014, the average Chinook salmon PSC limit remaining from the pollock PSC limit of 25,000 was over 11,000 Chinook salmon. Of the 11,000 Chinook salmon remaining in the GOA pollock fishery, over 8,000 Chinook salmon were left unused from the Central GOA, and over 3,000 were left unused in the Western GOA. Finally, the Council considered the demonstrated ability of the voluntary catch share agreements in the GOA pollock fishery and controls implemented by this sector to control Chinook PSC use (see Section 1.2.1.2 in this RIR). Based on these data, the Council determined and NMFS agrees that it is highly unlikely that this emergency rule will result in total Chinook salmon PSC from all GOA trawl groundfish fisheries exceeding 32,500 Chinook salmon. The emergency rule will allow NMFS to open non-pollock groundfish fisheries for the Non-Rockfish Program CV Sector but still limit the overall amount of Chinook salmon PSC use by this sector.

*Criterion 3 – Can be Addressed through Emergency Rulemaking for which the Immediate Benefits Outweigh the Value of Notice and Comment Rulemaking*

NMFS and the Council have determined that the emergency situation created by the May 3, 2015, closure can be addressed by emergency regulations. As explained earlier, an additional allocation of 1,600 Chinook salmon PSC can be provided to the Non-Rockfish Program CV Sector without creating conservation and management issues for the resource or direct users of Chinook salmon and consistent with the goals of Amendment 97 (see Sections 1.6.1 and 1.6.2 of the RIR for additional detail).

To address the emergency, NMFS must implement an emergency rule that waives the notice-and-comment rulemaking period. The benefits of waiving notice-and-comment rulemaking will serve the industry and public by allowing for additional harvest of groundfish by the Non-Rockfish Program CV Sector. Any delay that results in implementing rulemaking will reduce opportunities to harvest non-pollock groundfish species such as flatfish and Pacific cod. The Pacific cod fishery reopens for this sector in early September, and represents the primary fall opportunity for restoring lost catches and groundfish revenue for this sector. Sections 1.6.1 and 1.6.2 of the RIR describe the potential additional harvest opportunities for the Non-Rockfish Program CV Sector in greater detail.

Without the waiver of notice-and-comment rulemaking, the Non-Rockfish Program CV Sector will not have sufficient time to prosecute these fisheries as intended. Flatfish and Pacific cod trawl fisheries are high volume fisheries that require extended fishing time. Fishing time would be extremely limited, or unavailable, with notice-and-comment rulemaking. For example, the trawl Pacific cod fishery closes by regulation on November 1, 2015, so the directed Pacific cod fishery is only available for harvest during a limited period of time. Vessel owners need time to secure new crew, which may have shifted into other groundfish fisheries, non-groundfish fisheries or other activities. In addition, vessel owners need sufficient lead time to revise fishing plans, restock vessels, change gear, and have the vessel travel to and from the fishing grounds to prosecute the reopened fisheries.

Processors also require lead time to plan for new deliveries of groundfish that they have ceased to process due to the closure. Once the summer production cycle was altered by eliminating landings from the Non-Rockfish Program CV Sector, processors removed these traditional fishery products from their annual processing cycle and budget planning. Processors

will need to secure market orders with buyers for desired finished product forms and establish pricing. Packaging materials and shipping containers must be delivered to processing plants. Processing factories must be reconfigured to process groundfish. Processors will also need to secure and assign labor to these fisheries. This emergency rule needs to be effective in advance of the start of the fisheries in order to provide processors with the time needed to plan and prepare for processing operations. Therefore, the benefits of the waiver of public notice and comment more than offset the value of standard notice-and-comment rulemaking.

Any change to the Chinook salmon PSC limit for the non-Rockfish Program CV Sector will require an amendment to the FMP amendment. Secretarial review of FMP amendments must follow the process set forth in section 304 of the Magnuson-Stevens Act, which requires more time to complete than is available to provide relief for the Non-Rockfish Program CV Sector. While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the full ability to comment, the Council and NMFS have determined that in this case, the cost of the foregone harvest opportunity outweighs the benefit of using the more protracted, standard process because it would be ineffective for addressing the immediate issue. The Council initiated a typical fishery management plan amendment process in June 2015 to address this situation in a more permanent manner.

The purpose of this emergency rule is to promulgate a temporary regulatory amendment that would provide a one-time allocation of additional Chinook salmon PSC to the Non-Rockfish Program CV Sector, while allowing continued analysis of the issue in a separate, and standard, amendment process. This emergency rule is needed to re-open groundfish trawl fisheries in order to temporarily ameliorate unforeseen economic consequences due to the unexpectedly high use of Chinook salmon PSC in the Western GOA.

## **Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule is consistent with the National Standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This emergency rule will allow groundfish fisheries for the Non-Rockfish Program CV Sector to be reopened as early as August 2015 to address the unforeseen, early closing of these fisheries in early May 2015. Once groundfish seasons are reopened, this emergency rule is anticipated to allow for harvest of most of the remainder of the non-pollock fisheries available to this sector and should prevent prolonged economic losses from the closure to the Non-Rockfish Program CV Sector and processors receiving landings from this sector. The reopened fisheries may partially restore the indirect economic effects to the community of Kodiak that would otherwise be lost if the fishery closing is allowed to extend to the end of 2015 GOA groundfish season, which is currently scheduled for December 31, 2015. If this rule were delayed to allow for notice and comment, impacted entities would likely be prevented from harvesting the 13,000 to 15,000 metric tons of groundfish that would otherwise be available to impacted entities through the remainder of 2015. The lost revenue from this forgone harvest is estimated to be approximately \$4.6 million in ex-vessel value and \$11.3 million in first wholesale value. Fishermen, shoreside processors, and communities that participate in the Non-Rockfish Program CV Sector would have limited alternatives to mitigate this significant, negative economic impact due to the directed fishing closure. Providing an additional PSC limit of 1,600 Chinook salmon to the Non-Rockfish

Program CV Sector as soon as possible is likely to restore a substantial portion of the foregone groundfish harvest due to the closure, restore the associated harvesting and processing revenues, and provide benefits to communities engaged in these fisheries, primarily the community of Kodiak.

As explained earlier, after the closure of the Non-Rockfish Program CV Sector on May 3, 2015, NMFS became aware of the significant difference in Chinook salmon PSC use in 2015 in comparison with the level of use anticipated in the Amendment 97 Analysis. The Council and NMFS had no way of foreseeing that the amount of Chinook salmon PSC taken by this sector would be so much greater than the historic number of Chinook salmon PSC. The Chinook salmon PSC limit was reached quickly, and the Non-Rockfish Program CV Sector was not able to mitigate fishing operations that modified where and how the fishery occurred to limit Chinook salmon PSC.

Finally, the time required for notice-and-comment rulemaking would not provide relief from the closure of these fisheries because it would not provide sufficient time for participants to harvest enough groundfish to offset the foregone revenue due to the closure. The Magnuson-Stevens Act FMP amendment process sets forth certain requirements that must be followed, such as a 60-day comment period on an FMP amendment. Because the Non-Rockfish Program CV Sector must re-open by mid-August, there is not enough time to follow the FMP amendment process prescribed by the Magnuson-Stevens Act and provide sufficient time for the sector to prosecute critical fisheries that are typically open the first few days of September, or for processing operations to prepare for receiving groundfish from landings in September. For fishery participants to prosecute these reopened fisheries in early September they must contact, secure, and redeploy crew; as well as restock vessels, change gear, and travel to the fishing

grounds. For processors to be prepared to accept groundfish deliveries from these vessels in early September, they must secure market orders, prepare packaging materials, and shipping containers, as well as contact, secure and train and house processing laborers. NMFS has no other way than this emergency rule to amend these PSC limits in a timely manner to restore forgone fishing opportunities for 2015. Allowing for access to the remaining groundfish harvest for the rest of 2015 provides immediate economic benefits that outweigh the value of the deliberative notice-and-comment rulemaking process.

Similarly, for the reasons above that support the need to implement this emergency rule in a timely manner, the Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness provision of the Administrative Procedure Act and make the emergency rule effective immediately upon publication in the **Federal Register**. As stated above, NMFS anticipates that this emergency rule will allow for harvest of most of the remainder of the non-pollock fisheries available to this sector, and should prevent prolonged economic losses from the closure to the Non-Rockfish Program CV Sector and processors receiving landings from this sector.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from OMB review. The RIR prepared for this emergency rule is available from NMFS (see **ADDRESSES**).

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 3, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

### **PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447, Pub. L. 111–281.

2. In § 679.21, revise paragraphs (i)(2)(iii) and (i)(7)(i), and add paragraph (i)(8) to read as follows:

#### **§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(i) \* \* \*



(2) \* \* \*

(iii) *Non-Rockfish Program catcher vessel Sector*. For the purpose of accounting for the Chinook salmon PSC limit at paragraph (i)(3)(i)(C) or paragraph (i)(8) of this section, the Non-Rockfish Program catcher vessel Sector is any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting areas of the GOA and not operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector.

\* \* \* \* \*

(7) \* \* \*

(i) Vessels in a sector defined at paragraph (i)(2) of this section will catch the applicable Chinook salmon PSC limit specified at paragraph (i)(3)(i) or paragraph (i)(8) of this section for that sector, NMFS will publish notification in the **Federal Register** closing directed fishing for all groundfish species, other than pollock, with trawl gear in the Western and Central reporting areas of the GOA for that sector; or

\* \* \* \* \*

(8) From [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 31, 2015, NMFS establishes a Chinook salmon PSC limit of 1,600 in the Western and Central reporting areas of the GOA for the Non-Rockfish Program catcher vessel Sector defined in paragraph (i)(2)(iii) of this section.

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